

NEIFELD DOCKET NO: EDWA0018U-US
IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF: White et al.
USPTO CONFIRMATION CODE: 2518
APPLICATION NO: 10/733,292
FILED: 12/12/2003
EXAMINER: Michael Thaler
GROUP ART UNIT: 3731
FOR: INTRALUMINAL GRAFT

ASSISTANT COMMISSIONER FOR PATENTS
ALEXANDRIA, VA 22313

37 CFR 1.181 PETITION

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C.

I. Statement of the Precise Relief Requested

The applicant requests that the Director withdraw the Notice of Abandonment, dated March 7, 2008.

II. Material Facts in Support of the Petition

Fact 1. A Decision on Appeal was decided by the Board of Patent Appeals and Interferences on May 18, 2007.

Fact 2. Appellant then filed a Request for Rehearing on July 3, 2007, which is within two months of May 18, 2007.

Fact 3. The Decision on Request for Rehearing issued on January 25, 2008.

Fact 4. A Notice of Appeal to the United States Court of Appeals for the Federal Circuit is being filed herewith (March 14, 2008), which is within two months of January 23, 2008.

Fact 5. A Notice of Abandonment was issued on March 7, 2008.

Fact 6. 37 C.F.R. §41.52(a) states that:

(a)(1)Appellant may file a single request for rehearing within two months of the date of the original decision of the Board. No request for rehearing from a decision on rehearing will be permitted, unless the rehearing decision so modified the original decision as to become, in effect, a new decision, and the Board states that a second request for rehearing would be permitted. The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board. Arguments not raised in the briefs before the Board and evidence not previously relied upon in the brief and any reply brief(s) are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) and (a)(3) of this section. When a request for rehearing is made, the Board shall render a decision on the request for rehearing. The decision on the request for rehearing is deemed to incorporate the earlier opinion reflecting its decision for

appeal, except for those portions specifically withdrawn on rehearing, and is final for the purpose of judicial review, except when noted otherwise in the decision on rehearing.

Fact 7. 37 C.F.R. §1.304 states in relevant part:

(a)(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§1.302) or for commencing a civil action (§1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for rehearing or reconsideration of the decision is filed within the time period provided under §41.52(a), §41.79(a), or §41.127(d) of this title, the time for filing an appeal or commencing a civil action shall expire two months after action on the request....

III. Reasons Why the Relief Requested Should be Granted

The Notice of Abandonment dated March 7, 2008 is erroneous because the application was pending. 37 C.F.R. §41.52(a).

This Petition is not moot because the applicant has filed a Notice of Appeal to the CAFC. 37 CFR 1.304. Therefore, the application is still pending.

IV. Conclusion

The Director should issue a paper formerly withdrawing the Notice of Abandonment dated March 7, 2008, and acknowledge that this application is pending, so that the appeal to the CAFC may continue.

Respectfully Submitted,

3/14/2008

Date

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RWH
March 14, 2008 (3:27pm)

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